

Regular Session, 2011

SENATE BILL NO. 242

BY SENATOR APPEL

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

PUBLIC CONTRACTS. Provides relative to change orders and splitting of profits, fees, and commissions in public contracts. (8/15/11)

1 AN ACT

2 To amend and reenact R.S. 14:141 and R.S. 39:126, to enact R.S. 38:2222 and R.S.
3 39:1557.1, and to repeal R.S. 38:2196.1, relative to public contracts; to provide for
4 prohibited splitting of profits, fees, and commissions; to provide with respect to
5 recordation of certain change orders to public contracts; and to provide for related
6 matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 14:141 is hereby amended and reenacted to read as follows:

9 §141. Prohibited splitting of profits, fees or commissions; exceptions

10 A. For the purposes of this ~~S~~section, "splitting of profits, fees or
11 commissions" means the giving, offering to give, receiving or offering to receive,
12 directly or indirectly, anything of apparent present or prospective value by or to a
13 public officer or public employee or to any fund or fiduciary existing for the benefit
14 of or use by such public officer or employee, when such value is derived from any
15 agreement or contract to which the state or any **political** subdivision thereof is a
16 party.

17 B. There shall be no splitting of profits, fees or commissions, past or present,

1 derived from the sale of any commodity, goods, services, insurance, or anything of
 2 value to the state or any **political** subdivision thereof from which a public **officer**
 3 ~~official~~ or **public** employee, representing the state **or a political subdivision, as the**
 4 **case may be,** in his official capacity in the contract negotiations, receives or offers
 5 to receive a portion of the profits, fees and/or commissions, unless the amount
 6 thereof and the conditions therefor are included in detail in the contract of sale or the
 7 insurance contract and ~~the said~~ contract is filed by the public **officer** ~~official~~ or
 8 **public** employee hereinabove described with the secretary of state at least ten days
 9 prior to execution of ~~the said~~ contract. The ten-day filing period shall be waived in
 10 the event of an emergency in which such filing is not reasonable. Upon filing
 11 thereof, the secretary of state shall immediately release to the news media the details
 12 of such contract and, upon written request, furnish a copy of such contract to the
 13 news media. **The contract shall be a public record.**

14 C. Whoever commits the crime of failure to report the splitting of profits,
 15 fees or commissions, and to contain such fee arrangement in the contract of sale or
 16 in the insurance contract as provided by this **Section** ~~act~~ shall upon conviction be
 17 fined not more than one thousand dollars or shall be imprisoned, with or without
 18 hard labor, for not more than two years, or both.

19 Section 2. R.S. 38:2222 is hereby enacted to read as follows:

20 **§ 2222. Change orders; recordation**

21 **Each change order to a public works contract or to a contract for**
 22 **materials and supplies which adds an amount of ten thousand dollars or more**
 23 **or all change orders to a contract aggregating to an amount of twenty percent**
 24 **or more of the original contract amount shall be recorded by the public entity**
 25 **which entered into the contract in the office of the recorder of mortgages in the**
 26 **parish where the work is to be done or, if not a public work, where the entity is**
 27 **domiciled not later than thirty days after the date of the change order which**
 28 **requires that the recordation take place.**

29 Section 3. R.S. 39:126 is hereby amended and reenacted to read as follows:

1 §126. Change orders

2 A. Any change order in excess of one hundred thousand dollars for a project
3 undertaken pursuant to an appropriation in the Capital Outlay Act shall require the
4 approval of the Joint Legislative Committee on the Budget. In addition, a change
5 order for a project undertaken pursuant to this Part shall also be subject to the
6 approval of the commissioner of administration. Any change order in excess of fifty
7 thousand dollars but less than one hundred thousand dollars shall be submitted to the
8 Joint Legislative Committee on the Budget for review but shall not require
9 committee approval.

10 **B. Each change order to a contract which adds an amount of ten**
11 **thousand dollars or more or all change orders to a contract aggregating to an**
12 **amount of twenty percent or more of the original contract amount shall be**
13 **recorded by the agency which entered into the contract in the office of the**
14 **recorder of mortgages in the parish where the work is to be done not later than**
15 **thirty days after the date of the change order which requires that the**
16 **recordation take place.**

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18 **§1557.1. Change orders; recordation**

19 **Each change order to a contract which adds an amount of ten thousand**
20 **dollars or more or all change orders to a contract aggregating to an amount of**
21 **twenty percent or more of the original contract amount shall be recorded by the**
22 **governmental body which entered into the contract in the office of the recorder**
23 **of mortgages in the parish where the work is to be done or where the entity is**
24 **domiciled not later than thirty days after the date of the change order which**
25 **requires that the recordation take place.**

26 **Section 4. R.S. 38:2196.1 is hereby repealed.**

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Jerry J. Guillot.

DIGEST

Present law prohibits the splitting of profits, fees or commissions in certain instances. Defines "splitting of profits, fees or commissions" as the giving, offering to give, receiving or offering to receive, directly or indirectly, anything of apparent present or prospective value by or to a public officer or public employee or to any fund or fiduciary existing for the benefit of or use by such public officer or employee, when such value is derived from any agreement or contract to which the state or any subdivision thereof is a party.

Present law defines "public officer," and "public employee" to apply to any executive, ministerial, administrative, judicial, or legislative officer, office, employee or position of authority respectively, of the state or any parish, municipality, district, or other political subdivision thereof, or of any agency, board, commission, department or institution of said state, parish, municipality, district, or other political subdivision.

Proposed law clarifies that the prohibition is applicable to political subdivisions.

Present law provides that there shall be no splitting of profits, fees or commissions, past or present, derived from the sale of any commodity, goods, services, insurance, or anything of value to the state or any subdivision thereof from which a public official or employee, representing the state in his official capacity in the contract negotiations, receives or offers to receive a portion of the profits, fees and/or commissions, unless the amount thereof and the conditions therefor are included in detail in the contract of sale or the insurance contract and said contract is filed by the public official or employee with the secretary of state at least 10 days prior to execution of said contract. Require that 10-day filing period be waived in the event of an emergency in which the filing is not reasonable. Upon the filing, the secretary of state shall immediately release to the news media the details of such contract and, upon written request, furnish a copy of such contract to the news media.

Proposed law clarifies that the provision applies to political subdivisions. Also specifies that the contract is a public record.

Present law provides that whoever commits the crime of failure to report the splitting of profits, fees or commissions, and to contain such fee arrangement in the contract of sale or in the insurance contract shall upon conviction be fined not more than \$1,000 or shall be imprisoned, with or without hard labor, for not more than two years, or both. Proposed law retains present law.

Present law (R.S. 38:2196.1) provides that when any person or other entity enters into any contract awarded without bidding with a state entity or local entity, or any contract with a local entity exceeding \$10,000 awarded with bidding, in which a commission, fee, or other consideration is paid to the contractor for the contractor to sell to or provide to the state entity or local entity any commodity, goods, brokerage service or other service of any kind, insurance, or anything of value, then the full disposition, splitting, or sharing of such commission, fee, or other consideration shall be disclosed to the state entity or local entity by the contractor in writing by an affidavit of notice of fee disposition prescribed by the Board of Ethics notarized as to its authenticity. Requires that the affidavit include the full value of the commission, fee, or other consideration to be paid, the names of all parties to receive dispositions, splits, or shares of the commission, fee, or other consideration, and the signature of the party authorized to commit the entity receiving the commission, fee, or other consideration to the contract, who shall attest to the truth of the facts set forth in the affidavit. Requires that the affidavit of notice be attached to and made a part of the contract for which the commission, fee, or other consideration is paid and shall be recorded in the public record. Provides that if at any time the disposition, splitting, or sharing of the

commission, fee, or other consideration changes, or the amount of the commission, fee, or other consideration changes, then a new affidavit reflecting the changes from the first affidavit shall be prepared, executed, notarized, and recorded by the contractor in the public record. Provides that if for any reason the information on the recorded affidavit shall be found to be incorrect, then the contract shall become null and void and all payments of the commission, fee, or other consideration shall be rebated to the state entity or local entity which entered into the contract. Provides that in addition, intentional misrepresentation of the facts on an affidavit shall subject the party attesting to the facts to the penalties provided for filing or maintaining false public records provided for in R.S. 14:133.

Proposed law repeals present law.

Proposed law, relative to public works contracts and contracts for materials and supplies, provides that each change order which adds an amount of \$10,000 or more or all change orders to a contract aggregating to an amount of 20% or more of the original contract amount shall be recorded by the public entity which entered into the contract in the office of the recorder of mortgages in the parish where the work is to be done or, if not a public work, where the entity is domiciled not later than thirty days after the date of the change order which requires that the recordation take place.

Present law, relative to capital outlay projects, provides that any change order in excess of \$100,000 for a project undertaken pursuant to an appropriation in the Capital Outlay Act shall require the approval of the Joint Legislative Committee on the Budget. Provides that, in addition, a change order for a project undertaken pursuant to Capital Outlay Budget law shall also be subject to the approval of the commissioner of administration. Requires that any change order in excess of \$50,000 but less than \$100,000 be submitted to the Joint Legislative Committee on the Budget for review but shall not require committee approval.

Proposed law retains present law.

Proposed law requires that each change order to a contract which adds an amount of \$10,000 or more or all change orders to a contract aggregating to an amount of 20% or more of the original contract amount shall be recorded by the agency which entered into the contract in the office of the recorder of mortgages in the parish where the work is to be done not later than thirty days after the date of the change order which requires that the recordation take place.

Proposed law, relative to the Louisiana Procurement Code, requires each change order to a contract which adds an amount of \$10,000 or more or all change orders to a contract aggregating to an amount of 20% or more of the original contract amount shall be recorded by the governmental body which entered into the contract in the office of the recorder of mortgages in the parish where the work is to be done or where the entity is domiciled not later than 30 days after the date of the change order which requires that the recordation take place.

Effective August 15, 2011.

(Amends R.S. 14:141 and R.S. 39:126, adds R.S. 38:2222 and R.S. 39:1557.1; deletes R.S. 38:2196)